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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 324.

WILLIAM J. BUTTFIELD, PLAINTIFF IN ERROR,

vs.

NEVADA W. STRANAHAN, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED MAY 26, 1930.

(18,946.)

20498

(18,945.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 294.

WILLIAM J. BUTTFIELD, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 28, 1903.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between William J. Buttfield, plaintiff, and Nevada N. Stranahan, collector of the port of New York, defendant a manifest error hath happened, to the great damage of the said William J. Buttfield as is said and appears by his complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 15th day of June 1903, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19th day of May, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States the one hundred and twenty-seventh.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

ALFRED C. COXE,
U. S. Judge.

2 [Endorsed:] E & A C 2042 Supreme Court of the United States. William J. Buttfield plaintiff in error, *vs.* Nevada N. Stranahan collector of the port of New York defendant in error. Writ of error. James L. Bishop attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this — day of ——, 189–. —— ——, attorney for defendant in error. A copy of the within paper has been this day received at this office May 20 1903 Henry L. Burnett, U. S. attorney. S. 1.45 p'd

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to 53 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of William J. Buttfield plaintiff in error, against Nevada N. Stranahan, collector of the port of New York defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-second day of May in the year of our Lord, one thousand nine hundred and three and of the Independence of the United States the one hundred and twenty-seventh.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 New York Supreme Court, County of New York.

WILLIAM J. BUTTFIELD, Plaintiff,
against
NEVADA N. STRANAHAN, Collector of the Port of New York, Defendant. } Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judg-

ment will be taken against you by default for the relief demanded in the complaint.

Dated New York, December 4th, 1902.

JAMES L. BISHOP,
Plaintiff's Attorney.

Post office address and office, No. 135 Broadway, borough of Manhattan, New York city.

(Endorsed:) New York supreme court, county of New York.—William J. Buttfield, plaintiff, against Nevada N. Stranahan, collector of the port of New York, defendant Summons.—James L. Bishop, plaintiff's attorney, 135 Broadway, New York city.—Served Dec. 4, 1902, custom house, New York.—Custom house, N. Y. Collector's office, law division. Service of a copy of the within is admitted this 4th day of Dec. 1902. N. N. Stranahan, collector.—Received Dec. 8, 1902, U. S. attorney's office.

4 Supreme Court of the State of New York, County of New York.

WILLIAM J. BUTTFIELD, Plaintiff,
against
NEVADA N. STRANAHAN, Collector of the Port of New York, Defendant.

William J. Buttfield, the above named plaintiff, complains of Nevada N. Stranahan, the above named defendant, and respectfully shows:

First. At the times hereinafter mentioned, the plaintiff was the owner of eight (8) packages of teas, imported by the steamer "Adana," and marked

No. 2 and stored at the Roberts stores of the New York Dock Company, in the borough of Brooklyn, city of New York.

Second. On or about the 7th day of November, 1902, the plaintiff duly tendered to the defendant, who was then and is now the collector of customs at the port of New York, the duties payable under the laws of the United States upon the said teas, and then and there demanded the said teas from the defendant, and the defendant refused to deliver the same to the plaintiff or to permit him to remove the same from said stores, or to receive the said duties, or any duties on said teas.

Third. On or about the 16th day of November, 1902 the defendant wrongfully seized the said teas and removed and destroyed the same.

5 *Fourth.* The said teas were of the value of one hundred and twelve 00/100 dollars.

Fifth. By reason of the said wrongful acts aforesaid the plaintiff has been damaged in the sum of one hundred and fifty ($150) dollars.

Wherefore the plaintiff demands judgment against the defendant for the sum of one hundred and fifty ($150) dollars damages, with interest and costs.

JAMES L. BISHOP,
Attorney for Plaintiff.

Office & P. O. address, 135 Broadway, borough of Manhattan, New York city.

COUNTY OF NEW YORK, *ss:*

William J. Buttfield, being duly sworn deposes and says: That he is the plaintiff in this action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except — to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WILLIAM J. BUTTFIELD.

Sworn to before me this 24th day of December, 1902.
LUTHER G. BILLINGS, JR.,
Commissioner of Deeds, New York City.

(Endorsed:) New York supreme court.—William J. Buttfield, plaintiff, against Neveda N. Stranahan, collector of the port of New York, defendant.—Complaint.—James L. Bishop, attorney for plaintiff, No. 135 Broadway, New York city.—Received, Dec. 24, 1902, U. S. attorney's office.

6 (121.)

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

To the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit:

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } *ss:*

Nevada N. Stranahan, petitioner and affiant, respectfully showeth that he was, prior to the commencement of the suit hereinafter referred to, collector of the customs for the port and district of the city of New York, duly appointed according to law, and that on or about

the 4th day of December, 1902, a suit was commenced against him by William J. Buttfield, in the supreme court of the county of New York, for or on account of acts done by him under the revenue laws of the United States, and as such collector, and that he has been served with process in said suit in said southern district, and that no trial has been had in said cause.

He therefore prays that in pursuance of the act of Congress, in such case made and provided, the said cause so commenced in the said supreme court may be removed therefrom and entered on the docket of this honorable court, and thereafter proceeded in as a cause originally commenced in this court.

And he will ever pray, etc.

And being duly sworn, deposes and says, that the matters hereinbefore set forth are true to the best of his knowledge, information and belief.

NEVADA N. STRANAHAN.

Sworn to before me this 31st day of December, A. D. 1902.

[SEAL.] L. J. MAHER,
Notary Public, County, N. Y.

I certify that, as counsel for the petitioner, I have examined into the proceedings against him, and have carefully inquired into all the matters set forth in the within petition and affidavit, and that I believe the same to be true.

New York, January 2nd, 1903.

HENRY L. BURNETT,
U. S. Attorney, Counsellor of the said Circuit Court.

(Endorsed:) U. S. circuit court.—William J. Buttfield, plaintiff, *vs.* Nevada N. Stranahan, collector of customs at the port of New York.—Petition to remove cause.—Henry L. Burnett, United States attorney, attorney for defendant.—U. S. circuit court, southern district of New York, Filed Jan. 2, 1903, John A. Shields, clerk.

7 Form No. 672.

The President of the United States of America to the judges of the supreme court of the county of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States, for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against Nevada N. Stranahan defendant by William J. Buttfield plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 6th day of January 1903, as fully and amply as the same are remaining before you, by whatever names the said parties may be

called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 2nd day of January in the year one thousand nine hundred and three.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

HENRY L. BURNETT, *United States Attorney,*
Attorney for Defendant.

(Endorsed:) U. S. circuit court.—William J. Buttfield *vs.* Nevada N. Stranahan.—Certiorari.—Henry L. Burnett, United States attorney, attorney for defendant.—I hereby certify, that on the 2nd day of January, 1903, at the city of New York, in my district, I
8 served the within certiorari upon the within named the judges of the supreme court of the county of New York by exhibiting to Harry Burrell as deputy county clerk for New York county the within original, and at the same time leaving with him a copy thereof. Wm. Henkel, United States marshal, southern district of New York. Dated January 6th, 1903.—U. S. circuit court, southern district of New York, Filed Jan. 2, 1903, John A. Shields, clerk.

9 Circuit Court of the United States, Southern District of New York.

WILLIAM J. BUTTFIELD, Plaintiff,
vs.
NEVADA N. STRANAHAN, Collector of the Port of New York, Defendant.

The above named defendant by his attorney, Henry L. Burnett, United States attorney, for the southern district of New York, answering the complaint of the plaintiffs herein, alleges:—

First. He admits that at the time and times set forth in said complaint the defendant was and now is collector of customs at the port of New York.

Second. Defendant further answering, denies each and every allegation in said complaint contained, except as herein expressly admitted.

Wherefore defendant asks judgment that the complaint of the plaintiff herein be dismissed with costs.

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant.

Office & P. O. address, room 50, P. O. building, New York city.

(Endorsed:) U. S. circuit court, southern district of New York.—William J. Buttfield, plaintiff, *vs.* Nevada N. Stranahan, collector of the port of New York, defendant.—Answer.—Henry L. Burnett, United States attorney, attorney for def't. U. S. circuit court, southern district of New York, Filed Feb. 28, 1903, John A. Shields, clerk.

10 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms in the borough of Manhattan, in the city of New York, on Monday the thirteenth day of April in the year of our Lord one thousand nine hundred and three.

Present: The Honorable Alfred C. Coxe, circuit judge.

WILLIAM J. BUTTFIELD
vs.
NEVADA N. STRANAHAN, Collector of the Port of New York.

Now comes the plaintiff by James L. Bishop, Esq., his attorney and moves the trial of this cause. Likewise comes the defendant by E. B. Whitney, Esq., his attorney. Thereupon a jury is impaneled and the cause proceeds to trial. After hearing the evidence for the respective parties and the argument of counsel the court directs a verdict for the defendant.

An extract from the minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

11 United States Circuit Court, Southern District of New York.

WILLIAM J. BUTTFIELD, Plaintiff,
vs.
NEVADA N. STRANAHAN, Collector of the Port of New York, Defendant.

The above entitled action having come on for trial on a regular call of the calendar of said court at a session thereof held by Hon. Alfred C. Coxe, circuit judge and a jury on the 13th day of April, 1903, in the United States court and post office building, in the city of New York, and said court having directed a verdict in favor of the defendant, and having ordered that judgment should be entered in said action in favor of the defendant against the plaintiff, with costs of said action, and said costs having been adjusted at the sum of twenty-three 20/100 dollars ($23.20)

Now on motion of Henry L. Burnett, United States attorney, for the defendant (Edward B. Whitney of counsel) it is

Ordered, adjudged and decreed that the defendant Nevada N. Stranahan have judgment against the said plaintiff, upon the issues

in said action dismissing the complaint upon its merits with costs, and that he recover the sum of twenty-three 20/100 dollars costs, and that defendant have execution therefor.

12 Judgment signed and entered this 15th day of May, 1903.

JOHN A. SHIELDS, *Clerk.*

Assented to as to form.

JAMES L. BISHOP,
Att'y for Plaintiff.

(Endorsed:) U. S. circuit court, southern district of New York.—Wm. J. Buttfield, plaintiff, *vs.* Nevada N. Stranahan, collector, &c., defendant.—Judgment.—Henry L. Burnett, United States attorney, attorney for defendant.—U. S. circuit court, southern district of New York, Filed May 15, 1903, John A. Shields, clerk.

EVENING POST JOB PRINTING HOUSE, NEW YORK.

United States Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM J. BUTTFIELD,
Plaintiff,

AGAINST

NEVADA N. STRANAHAN, Collector of the Port of New York,
Defendant.

Bill of Exceptions.

Be it remembered that at the Stated Term of the Circuit Court of the United States for the Southern District of New York, held at the Borough of Manhattan, City of New York, in said District, on the 13th day of April, 1903, the Hon. Alfred C. Coxe, a Judge of said Court, presiding, the above entitled cause coming on to be tried, the following proceedings were had, namely, a jury was duly empaneled and sworn.

APPEARANCES:

JAMES L. BISHOP and JAMES H. SIMPSON for Plaintiff.

HENRY L. BURNETT, for Defendant; EDWARD B. WHITNEY, of Counsel.

The following contains all of the evidence and proceedings on the trial.

The plaintiff, to sustain the issues upon his part, submitted the following stipulation: It is admitted and stipulated between the parties hereto that on the 13th day of November, 1902, the plaintiff duly tendered to the defendant the sum of $47.90, being the amount payable as import duties on the teas which are the subject of this action, and at the same time demanded the said teas from the defendant, and that the defendant declined to accept said duties and to deliver said teas. Thereafter, and before the commencement of this action the defendant ordered that the said teas be taken to the United States public stores for destruction, and that the said teas were thereafter removed by the defendant from the place where they were stored to the United States public stores and were there destroyed by the defendant.

Mr. Whitney: This stipulation was made before I was acquainted with the case. The word "duly" tendered does not mean to involve the concession that on the tender the plaintiff was entitled to the teas.

Mr. Bishop: Only that the duties were tendered in the proper way.

It is further admitted and stipulated for the purposes of this trial that on or about January 21, 1902, the packages of tea described in the first paragraph of the complaint were entered at the Custom House in the City of New York by the plaintiff's firm; that there was no irregularity in the invoice, entry or bonding of said teas; that they were examined on February 7, 1902, by Isaac McGay, Esq., examiner of tea at the port of New York, and were rejected as "inferior to standard in quality." That the plaintiff's firm appealed to the Board of U. S. General Appraisers, who thereafter and on March 10, 1902, certified to the Collector "that the said tea is inferior in quality to the standard prescribed by law," and accordingly overruled the appeal. That the plaintiff's firm was notified of said decision on March 12, 1902, and that said teas were in fact in-

ferior in quality to said standard, provided that by 7
"quality" is meant taste and flavor (the plaintiff not hereby conceding that said law, being the Tea Act of 1897, is constitutional, or that the standard was lawfully fixed by the Secretary of the Treasury).

Plaintiff offers in evidence letter addressed to Hon. Nevada N. Stranahan, Collector of Customs, New York City, dated New York, November 1, 1902, signed W. J. Buttfield.

Marked Exhibit 1 of this date.

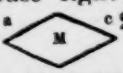
(Copy.)

Plaintiff's Exhibit I. 8

N. Y. Nov. 1st, 1902

HON. NEVADA N. STRANAHAN,
Collector of the Customs,
N. Y. City.

DEAR SIR:—

On January 20th, 1902, we entered for import at the N. Y. Customs House eight packages of tea ex. SS. *Adana* marked a  c 2, and covered by

bond No. 54330 and entry No. 13326.

These teas were reported by the Tea Examiner as inferior in quality to the prescribed Standard fixed and established by the Secretary of the Treasury, 9
under the Act of March 2d, 1897. Upon protest and re-examination, the findings of the Examiner were confirmed March 12th, 1902 by the U. S. General Appraisers. We received due notice of the Examiner's and United States Appraisers' said decisions.

On behalf of the present owner, viz., our Mr. W. J. Buttfield, we have this day applied to the Third Division of the N. Y. Custom House, for a permit to withdraw the said teas for consumption. This application has been refused on the ground that the teas have not been released under the Tea Inspection Act of March 2d, 1897.

On behalf of the present owner we have this day tendered to the Cashier of the N. Y. Custom House in the customary manner, Custom's duty transfer order No. 24238 for the full amount ($47.90) of the import duty levied upon said teas. Acceptance of this payment has been refused by the Cashier of the Custom House on the grounds that a withdrawal permit has not been passed or granted by said Third Division.

On behalf of the present owner, we now beg to tender you said Custom's duty transfer order for $47.90 in full payment of import duties, and request that you will release from the control of the Custom House the teas in question, and permit their withdrawal from Bond for consumption in this Country.

Respectfully,
(Sgd.) W. J BUTTFIELD.

Attached to Exhibit 1 is a transfer order on the Corn Exchange Bank in tender of payment of the duties as follows:

Plaintiff's Exhibit II.

SPECIAL CUSTOMS FUND TRANSFER.

CLEARING HOUSE No. 45.

No. 24,238 $47.90

THE CORN EXCHANGE BANK.

NEW YORK, Nov. 1, 1902.

The Collector of Customs, Port of New York, will charge and transfer to the account of "Duties Paid" Forty-seven & 90 Dollars from the amount deposited by The Corn Exchange Bank with the Assistant Treasurer of the United States at New

York, N. Y., to the account of the "Special Customs Fund." 13

THOS NASH,
Teller.

HAYNES,
Assistant Teller.

Plaintiff offers in evidence a letter dated November 6, 1902, addressed to W. J. Buttfield from the defendant.

Marked Exhibit 3 of this date.

Plaintiff's Exhibit III.

NEW YORK, Nov. 6th, 1902. 14

Mr. W. J. BUTTFIELD,
92 Wall Street,
New York City.

SIR:

I have received your letter dated November 1st enclosing duty transfer order for $47.90 and asking for the release of certain eight packages of tea ex S. S. *Adana* marked A M C No. 2, covered by Bond No. 54,330 and entry No. 13,326.

In reply I have to say that the Regulations of the United States Treasury Department, Article 753 *et seq.* provide for the orderly withdrawal of merchandise from bond upon the payment to the Cashier of Customs of the duties upon presentation 15
to him of the proper withdrawal and permit. Your tender of the transfer order referred to is therefore declined, and the same has been returned to you.

Respectfully,

(Sgd.) N. N. STRANAHAN,
Collector.

Also a letter dated November 7, 1902, from the plaintiff to the defendant.

Marked Exhibit 4 of this date.

14

16 **Plaintiff's Exhibit IV.**

NEW YORK, Nov. 7th, 1902.

Hon. NEVADA N. STRANAHAN,
Collector of Customs at the Port of N. Y.,
N. Y. City.

SIR:

We are in receipt of your letter dated Nov. 6th, relative to certain eight packages of tea, ex SS. *Adana*, marked A C No. 2, mentioned in our communication of the 1st inst.

We understand that you decline our tender of the transfer order in payment of duties, on the grounds that a proper withdrawal and permit has not been
17 presented to the Cashier of Customs in accordance with the Regulations of the United States Treasury Department, Article 753 *et seq.*

We now enclose the required withdrawal made out in duplicate as provided for in said Regulations, and we have to request on behalf of the present owner of the tea, that you will compare, enter and pass this withdrawal now presented at your office.

We have also to request that you will issue a withdrawal delivery permit for said eight packages of tea.

Said withdrawal made out in duplicate was presented on the 1st inst. at the New York Custom House, and refused by the Third Division, on the
18 ground that the tea in question had been rejected under the Act of March 2d, 1897. (See notation on face of withdrawal.)

Respectfully.
(Sgd.) W. J. BUTTFIELD.

(Enclosure.)

Also a letter from the defendant to the plaintiff, dated November 7, 1902.

Marked Exhibit 5 of this date.

Plaintiff's Exhibit V. 19

CUSTOM SERVICE.

OFFICE OF THE COLLECTOR,

New York, N. Y.

NOV. 7TH, 1902.

MR. W. J. BUTTFIELD,
92 Wall St.,
New York.

SIR:

In reply to your request of the 7th inst. for permission to withdraw for consumption certain eight packages of tea, covered by a withdrawal which you enclose, I have to say that this office declines to accept said withdrawal as not being in accordance with the requirements of Art. 1308, Regulations of 1899. 20

Respectfully yours,

(Sgd.) N. N. STRANAHAN,
Collector.

Also a letter from the plaintiff to the defendant, dated November 8, 1902. 21

Marked Exhibit 6 of this date.

22 **Plaintiff's Exhibit VI.**

NEW YORK, Nov. 8th, 1902.

Hon. NEVADA N. STRANAHAN,
Collector of the Customs at the Port of
New York,
N. Y. City.

DEAR SIR:

We are in receipt of your favor of the 7th inst., declining permission to withdraw for consumption certain eight packages of tea, on the ground that such withdrawal for consumption is not in accord-
23 ance with requirements of Article 1308, Regulations of 1899.

We presume that reference is made to Article 1308, appearing in the Regulations of the United States Treasury Department, now in force, viz: "No teas found on final examination to be unlaw-"ful importations under this Act (Act of March 2d, "1897) shall be released from bond, except for the "purpose of immediate transportation, or for de-"struction as the case may be."

We have this day presented at the Third Division of the N. Y. Custom House an entry for exportation for said eight packages of tea, ex SS. *Adana*,
24 marked

, No. 2, which entry for exportation has been refused on the ground that the tea in question was finally rejected under the Act of March 2d, 1897, more than six months previous to the present date. (See notation on face of entry.)

On behalf of the present owner, we now enclose said entry for exportation, made out as provided for in the Regulations of the United States Treasury Department, and we have to request that you will pass this entry for export now presented at your

office, and that you will issue an export withdrawal permit for said eight packages of tea.

Respectfully,

(Sgd.) W. J. BUTTFIELD.

Also a letter from the defendant to the plaintiff dated November 11, 1902.

Marked Exhibit 7 of this date.

Plaintiff's Exhibit VII.

NEW YORK, Nov. 11th, 1902.

Mr. W. J. BUTTFIELD,
Nos. 92/96 Wall St.,
New York.

SIR:

I have received your letter of the 8th inst. relative to your application to have released from bond for exportation certain eight packages rejected tea, ex S. S. *Adana*.

In reply I have to say that no such application can be considered, as the six months fixed by the Act of March 2, 1897, within which exportation is allowable, has already expired, and the tea in question will be ordered to the U. S. Public Stores for destruction.

Your export papers are herewith returned.

Respectfully yours,

(Sgd.) N. N. STRANAHAN,
Collector.

(Enclosures).

28 WILLIAM J. BUTTFIELD, called for the plaintiff, being duly sworn, testified as follows:

EXAMINED BY MR. BISHOP:

I am the plaintiff in this action, and am an importer of tea, and have been engaged in that business for fifteen years. I am an expert in teas. I was the owner of the eight packages of tea in controversy in the present suit, and was such owner in October and November, 1902, up to the time of their destruction. I purchased the teas from my firm, composed of Mr. C. W. McCutchen, special partner, and myself as general partner. The teas were stored at the time they were taken by the Collector
29 in a warehouse of the New York Dock Company, Brooklyn. I am familiar with the correspondence which has just been offered in evidence in this case. Through my firm we made an application at the Custom House for withdrawal of the teas for consumption, tendering the amount of duties levied upon the same. This was refused. That application was made in the usual and ordinary form in which applications for withdrawal of teas are made. Subsequently we made an application in the usual form at the Custom House for exporting teas. We also made an application to the Collector personally in writing to be permitted to withdraw the tea for consumption and to withdraw the teas
30 for export from this country.

I am a citizen of the United States, and was at the time of these occurrences. I am familiar with the different grades and qualities of teas. The teas in question were classified as country green teas. I am a citizen of New Jersey.

I have prepared a schedule giving the different qualities of green teas—country green teas—arranged in order and numbered from 1 to 17, Number 1 being the highest grade and Number 17 the lowest grade. This paper which I produce is such compilation.

Marked Exhibit 8 of this date.

Exhibit No. 8.

SCHEDULE OF COUNTRY GREEN TEAS ARRANGED IN ORDER OF QUALITY.

1 Choicest Moyune					
2 Choice Moyune	Choicest Teenkai				
3 Finest Moyune	Choice Teenkai				
4 Fine to Finest Moyune	Finest Teenkai				
5 Fine Moyune	Fine to Finest Teenkai				
6 On Fine Moyune	Fine Teenkai				
7 Fully Good Medium Moyune	On Fine Teenkai				
8 Good Medium Moyune	Fully Good Medium Teenkai	Finest Fychow			
9 On Good Medium Moyune	Good Medium Teenkai	Fine "			
10 Fair Moyune	On Good Teenkai	Good Medium Fychow	Finest Wenchow		
11 Good Common Moyune	Fair Teenkai	Fair "	Fine "		
12 Common Moyune	Good Common Moyune	Good Common "	Good Med. "		Good, clean, genuine Shanghai packed.
13	Common Teenkai	Common	Fair "		
14			Good Common		
15			Common "		
16					
17					Mixed, Shanghai packed.
					Common, refined and adulterated Shanghai packed.

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34 I am acquainted with the Government standard No. 7 for country green teas established by the Secretary of the Treasury in the regulations of March 21, 1902. That regulation was in force at the time of the rejection of these teas. The quality of the Government standard country green teas Number 7 relatively to the grading upon Exhibit 8 was a finest Teenkai, corresponding to Number 4 on schedule, Exhibit 8. The standard No. 7 would exclude all teas below No. 6, as shown upon Exhibit 8. The country green tea, standard 1901, Number 7, would correspond to Number 4 on the schedule. It would exclude all from 6 down.

"Q. Why not 5? A. The probabilities are that a
35 tea of the following season's import would correspond in quality with that of one grade higher of the previous season. In other words, there is one grade in quality difference."

"Q. There might be that shading down in the course of a year? A. Yes."

The quality of the eight packages of teas mentioned in the complaint was an On fine Teenkai, corresponding with grade Number 7, as shown on Exhibit 8. It corresponds with the grade on Exhibit 8, which is marked 7. That is called On fine Teenkai. The grade of the tea, as judged by style or appearance, was a first Gunpowder. By Gun powder tea, I mean—there are about ten grades
36 of tea in each invoice of country green teas, this was the second from the top—in style and appearance. The quality refers to its cup quality, its taste and flavor, the style refers to its appearance. In style and appearance this was the second grade of tea, and in cup quality—taste and flavor—it was the seventh on this schedule. I examined these teas myself and made a test of them. These teas are absolutely pure, and they are entirely genuine, there was no adulteration. There was nothing whatever about these teas that indicated in any way that they were unwholesome or unfit for consumption. The average quality of

country green tea is higher than that of other kinds 37
of tea imported into this country. At the present time the market value of country green teas ranges from 13 cents up to 40 cents. At the time of the destruction of these teas the range of prices was from 12 to 30 cents. The value of these teas at that time was 22 cents.

CROSS-EXAMINATION BY MR. WHITNEY:

The Government standard was finest Teenkai.

"Q. What makes you think so? A. Expert knowledge."

I found out by testing it. I tested it in the usual 38
way, pouring hot water on the tea, tasting and smelling it. I poured hot water on the tea, tasted the infusion and smelled the liquor. That is called the cup test, and is the ordinary way of finding out the quality of tea. It has always been so since I knew anything about the trade. I used the same test to ascertain what in my opinion was the quality of the tea that I had brought into the country. The tea would generally deteriorate in the course of a year on an average about one grade. It is not apt to deteriorate about four grades. The tea that I brought in would, in my opinion, deteriorate about one grade in the course of a year, so that if it was On fine Teenkai when I brought it in 39
it would be, in my opinion, a year afterwards, about fully good medium Teenkai.

"Q. It is necessary for the Government to select a standard next year that will be a little higher than the importations which are the lowest the Government is willing to admit the next year, isn't it? A. I don't know what it is necessary for the Government to o.

"Q. I mean in selecting the standard the Government must allow for the deterioration during the year? A. I cannot answer that question."

40 HENRY C. THORN, called for the plaintiff, being duly sworn, testified as follows:

EXAMINED BY MR. BISHOP:

I reside at 185 Lafayette avenue, Brooklyn, and am a tea broker. I have been in that business 23 years, and am an expert in teas, and know the different varieties and qualities of teas; I know the standard number 7 for country green teas in the year 1901. Plaintiff's Exhibit 8 of that date shown to me is a schedule of the different qualities of country green teas arranged in their order from the highest to the lowest. The highest grade of tea in quality shown by that exhibit is Choicest Moyune,
41 and the lowest is the Common Country Clean Shanghai packed. I make the grade of the standard for country green teas number 7 for that year, as compared with this schedule the Finest Teenkai, which is grade number 4 here. The standard will not exclude from importation all teas below grade number 4 as shown on Exhibit 8, I don't think it would exclude grade number 5. It would exclude all below grade 5. From my knowledge of the qualities of country green teas every grade from number 4 to number 15 on this list here I think they are every one of them perfectly fit for consumption. I am entirely familiar with them.

Mr. Whitney: Of course by not putting in objec-
42 tions to this we do not waive the objection that the Secretary of the Treasury is the proper judge of what tea is of good quality and fitness for consumption.

The Court: Of course.

I have tested the teas in question in this case, the eight packages. I made the grade of these teas in quality as compared with this schedule number 8 On fine Teenkai. That is grade 7 on this schedule. I think that if the Government standard number 7 had been enforced, all classes of teas from 6 down to 14 would be excluded. It would have excluded

all Fychow and Wenchow teas. There are Fychow 43
and Wenchow green teas which have been ordinary subjects of commerce in this country and which are pure, wholesome and suitable for consumption. Ever since I have been in business they have been articles of commerce in this country. Properly enforced they would all be excluded by this standard. As to the teas in controversy in this case I did not find them in any degree impure. They were genuine tea leaves, free from adulteration, and there was nothing whatever about their grade or quality which rendered them unfit for consumption. The tea was slightly inferior in flavor to the standard. That was the only difference. It was a higher grade of tea than the standard, the standard was a 44
Hyson and this was a first gunpowder. I didn't see any spurious or exhausted leaf among this tea. It would not be possible to say that these teas were in any sense of low quality or grade of teas.

CROSS-EXAMINATION BY MR. WHITNEY:

I don't know whether I ever saw the tea before about ten days ago or not; whether I saw it year or so ago or not. I saw it and examined it carefully about ten days ago. I made my examination about ten days ago; it was made in the usual manner, by drawing it, smelling and tasting it. I mean by pouring the boiling water on the dry leaf, and after 45
it draws out smell and taste it. That is what is called the cup test, and as far as I know it is the test that has always been known to the tea trade. I didn't make any chemical or microscopical tests. I think the standard tea, Government standard of 1901, was a Hyson. My recollection is that it was a Hyson. I have not looked at it in a good many months. In each importation each lot or chop of tea of a given grade there would be a variety of grades, but not necessarily of quality. I call the difference between Hyson and gunpowder the difference in grade or appearance of the leaf which

46 gives its commercial value. The difference between finest Teenkai and finest Fychow is the difference in the cup quality. I call it a difference in the quality of the tea in the cup. You might get a very fancy drawing Hyson or very common drawing gunpowder, and yet the common drawing gunpowder would bring a great deal more money.

"Q. That is in a given chop, whether finest Teenkai or On fine Teenkai or any other, there would be a portion, say, of the grade of the gunpowder that would be worth three times as much as the Hyson? A. Entirely on the style, not on the cup."

"Q. That would be a usual variation to have the gunpowder worth three times as much as the Hy-
47 son? A. Yes, in an ordinary chop of tea it might be."

"Q. The Hyson in a grade 6 for instance would naturally be expected to be about as good as a gunpowder in grade 9 or 10 wouldn't it? A. No, you couldn't make an On Fine Moyune——" [Interrupted.]

I think that a Hyson of an On Fine Moyune would be better than a gunpowder of number 9 or 10, certainly it would because this is entirely on the cup quality. I didn't testify on the trial last fall of Buttfield against Bidwell that in my opinion a Hyson of a higher grade would be about equal to a gunpowder of three or four grades below, not in
48 cup quality, if I understood the question. I remember your asking me such a question and trying to find out whether you meant the value commercially or whether this schedule—its cup quality. It might be equal in value or worth more money and not have the cup quality of the Hyson.

"Q. Don't you remember testifying when I showed you on the previous trial an actual memorandum of the contents of one chop, showing it varied from gunpowder at 23 cents down to a Hyson at 7½ cents, that that was about the usual variation? A. I think it was a China invoice, giving the cost in taels, and I testified as far as I could see it was an ordinary invoice of tea from Shanghai."

That, as I remember it, was about an ordinary 49
proportion between a Hyson and gunpowder in the same chop of tea. I don't remember what the standard of tea of 1901 was worth when it was selected. I know the market was very much lower then than to-day. It might have been a ten and one-half cent tea when it was selected. The standard that is selected is a quantity of tea selected by the United States Board of Tea Experts, approved by the Secretary of the Treasury, as I understand it.

"Q. And it has to be uniform in quality in every way, all the tea in the same standard? A. For instance, a green tea standard has to be exactly alike; every ounce of the tea alike." 50

All the country green tea has got to be uniform all the way through, because it has got to be distributed throughout the various importing headquarters in this country, and also distributed among the buyers in the country from which the tea is to be imported. Therefore, in order to get a standard, an amount of tea for a standard for the coming year, you have got to find a large enough supply of tea of that uniform quality to meet that requirement. I do not know how large a supply is necessary for country green tea; I know it was an extremely small quantity, looking at it from a wholesale standpoint. I couldn't tell how many chests they buy. I think I did buy it once and I think I 51
bought only five chests.

(To the Court). It is several years since, but I think when I did buy it, four or five years ago, I bought five half-chests of tea, which is a very small quantity of green tea.

I think the buying season in China for green tea begins in the latter part of June. I am not conversant with the dates, and it runs usually until the market is exhausted of stock. These standards are announced for the season about the month of March so that they can be sent out to

52 China before the opening of the season, and the intention is that anybody who needs or desires to buy tea can obtain the Government standard in time to send to China so that the buyers will know what tea will be brought into the United States next season. The new standards, I believe, are adopted in February the following winter, before the next season begins.

JOSEPH H. LESTER, called for plaintiff, being duly sworn, testified as follows:

EXAMINED BY MR. BISHOP:

I reside in Brooklyn and my place of business is
53 at 97 Wall street. Up to three years ago I was a tea broker and had been in that business for thirty years. I am an expert in the quality and grades of tea and am familiar with the tea known as country green tea. Exhibit 8 shown to me correctly represents, I should think, the different grades of tea according to the quality of the tea, arranged from the highest to the lowest. I am familiar with the standard for country green tea for the year 1901, known as standard No. 7. The grade of that tea as compared with Exhibit 8, in reference to the quality, was the finest Teenkai and it would grade upon that schedule number 4. That standard would exclude all grades below that number. I am sufficiently
54 familiar with the country green teas to state that all of them below that grade are of such a kind and quality as to be fit for consumption, pure and free from adulteration, down to the lowest, No. 17. I should think that all the teas from 4 or 5 to No. 17 are pure, free from adulteration and fit for consumption. I have examined the particular teas in question, these eight packages, and I think, their grade and quality, as shown on that exhibit, was an On fine Teenkai. I think it was very pure and good tea, entirely free from adulteration, and certainly free from false or spurious leaves. There was nothing whatever about these teas to indicate in any

way that their grade or character was such that they were unfit for consumption or improper articles of food. 55

It is stipulated that the value of the teas is as claimed in the complaint.

[PLAINTIFF RESTS.]

GEORGE HEWLETT, called for the defendant, being duly sworn, testified as follows:

EXAMINED BY MR. WHITNEY:

56 I am engaged in the tea trade in this city, and have been for about eighteen years. The name of my firm is Hewlett & Lee. I am the vice-president of the National Tea Association of the United States, and am also chairman of the Board of Tea Experts of the Treasury Department, which I have been for about five years. I have examined the tea of Mr. Buttfield, about which he is complaining in this action. I examined this tea by the cup test, as described by the witnesses who have been on the stand this morning, and I found it to be a tea of a decidedly low grade, and on this schedule, Exhibit 8, I should grade it Fair Fychow; that would be No. 11. In my opinion it was a pure tea, but of a low quality. When this standard of 1901 was 57 adopted I was a member of the Board; that Board consisted of seven members, two from New York, two from Chicago, one from Boston, one from Philadelphia and one from San Francisco. Once a year all the members attended at the sessions of the Tea Board. All the members attended at various sessions. Every member was not present all the time that the Board was in session. In my opinion the quality, using the phraseology of Exhibit 8, of the tea which was selected as the standard by the Board, was a Hyson of a fine Teenkai chop. By a

58 Hyson I mean one of the last lines in an invoice of green tea made out of the coarsest leaf on the invoice. It is made out of the coarsest leaf, and the gunpowder is the finest leaf, and there is a gradation between Hyson and gunpowder, so that by selecting a Hyson of a fine Teenkai we select the coarsest and poorest of that fine Teenkai. There is a considerable variation in the value between Hyson and gunpowder of the same chop, between the head line of the chop, it is called the extra gunpowder. The first gunpowder is ordinarily better than the Hyson. There would be a variation in the different chops, but in a general way I should say that a Hyson of the grade 6 would correspond in
59 value to a first gunpowder of about grade No. 9, of the grades on this schedule. Usually tea deteriorates in quality after it is imported into this country. In my opinion, according to this statement, Exhibit 8, a tea would be expected to deteriorate in the course of a year about one grade, and it is necessary in selecting standards one year to compare with the importations of the following year to allow for that deterioration then. At the time this Hyson of a fine Teenkai was selected as the sample, the Board made diligent search for any teas of lower grades—Hysons of lower grades—of pure teas in the New York market and obtainable by the trade, speaking of country green teas and were unable to
60 find any.

CROSS-EXAMINATION BY MR. BISHOP:

I found these eight packages of teas to be a first gunpowder grade. That refers to the style and appearance of the tea. By style and appearance I mean the shape and appearance of the dry leaf; that is to say, I mean that the gunpowder tea is a tea rolled up into small pellets, and a Hyson tea is one in which the leaf is more expanded and larger. That hasn't necessarily anything to do with the drinking quality of the tea, that is the Hyson tea is

coarser in size than the gunpowder tea. This standard country green tea No. 7 for the year 1901, the tea we are discussing, is a fine quality of tea. I should say that there were not a good many qualities of tea below that standard that were entirely palatable. In my opinion there were grades inferior to No. 7 which were perfectly pure, genuine tea leaves, free from adulteration and different from standard only in the flavor. That was true in regard to these teas in question—the eight packages that they differed from the standard only in flavor, that is, the flavor in my opinion was decidedly inferior to the flavor of the standard, that is the only distinction that I found between these teas and the standard. 61 62

REDIRECT-EXAMINATION BY MR. WHITNEY:

In my opinion there were no teas in the market at that time when the standard was selected that could have been obtained that were pure and that were inferior in cup quality to these teas which were selected as the standard, because I took pains to have diligent search made for such teas as could be bought in the necessary quantity for use as Government samples, and while such teas are produced they were not available for selection when the board was in session for the selection of samples.

The cause of the difference in value between the Hyson and gunpowder—the extra gunpowder—is that the gunpowder is made from the smaller leaf of the plant rolled up, presumably the youngest and most delicately flavored leaf; whereas the Hyson, being a large coarse leaf tea, is usually made from the oldest leaf and has a coarser flavor than the tea made from the young leaves. I mean that the Hyson does ordinarily have a coarser and poorer flavor than the gunpowder and that the Hyson of one grade in my opinion is usually equal in value to the best gunpowder of some grades below would arise from the fact that ordinarily it does not taste better 63

64 or smell better than the highest gunpowder of three or four grades below.

The price of this tea that was selected as the standard in 1901 was 10½ cents. The average price of country green teas at that time was about 16 cents I should say, and if we had been able to obtain such tea for the standard of a lower grade that was pure and fit for comsumption, its price would have been at that time about 9 cents I should say.

RECROSS-EXAMINATION BY MR. BISHOP:

When I say the average price of country green teas was 16 cents I mean that that was the average
65 price of the whole invoice of tea. I mean the entire crop of country green tea. I mean that the average price of the entire crop of country green tea was 16 cents; that is a general statement of my idea. I don't remember what the average price of the entire crop of country green teas was for the previous year. My impression is that the average price of the entire crop of country green teas for the succeeding year, 1902, was slightly higher, not more than a cent a pound higher. I don't know how many chests of country green tea were imported into this country in the year 1900. It is too dim in my memory to give it accurately. I can't say the number of half chests of country green teas
66 imported in 1902. I should say approximately 150,000 half chests. I can't give you the importations of half chests of country green tea for the year 1901; I think it was above the figure I have just mentioned. I am not confident of the figures I have just given; I arrived at them from an attempt to remember the facts. The value of the rejected tea at the time of the rejection was, I think, in the neighborhood of 20 cents per pound.

(To Mr. Whitney.) That value is in bond.

Before the duty was paid. While the standard was worth only 10½ cents the ones that were rejected were worth 20 cents largely because of the

better appearance of the dry leaf. It would be true 67
that an extra gunpowder might be inferior in cup quality—that is, in taste and flavor—to a Hyson tea, we will say, of fine quality, only if the extra gunpowder was from a chop of a very much lower grade. If they were of the same chop, then in my opinion the gunpowder would be of superior quality to the Hyson. It would have a superior taste no matter what the grade of the Hyson was when they were from the same chop.

Taking a gunpowder tea and a Hyson tea from the same chop I do not think it would be possible that the gunpowder tea might be inferior in quality to the Hyson.

68

REDIRECT-EXAMINATION BY MR. WHITNEY:

The condition of the trade makes it happen that a tea which is inferior to another in quality is higher in price because the leaf looks better, that is, the condition that people will pay a price for the good appearance of the dry leaf of the tea. They pay a better price for the appearance of the dry leaf, even if the flavor is really inferior, simply on account of its appearance. It is on account of the fact that people who buy tea from them buy it on the appearance and not on the taste and flavor. Another reason why the appearance should increase the value of the tea, if the flavor is inferior, 69
is that ordinarily a good appearance of the dry leaf indicates a reasonably good drawing quality. But if one tea is very much superior to another in quality but the appearance of the dry leaf is not so good, there is no other reason that I know of why the tea which looks better in the leaf should be higher in price.

[DEFENDANT RESTS.]

70 W. J. BUTTFIELD, called in rebuttal.

EXAMINED BY MR. BISHOP:

At the time that this standard No. 7 was adopted, there were many thousands of packages of a lower quality than the standard was. My firm owned at that time three or four thousand packages that were of lower quality than the standard selected. There were standards extending from "five" down to at least "thirteen," procurable at that time. They had been admitted under the United States government standard for the year 1900. If this standard No. 7 for the year 1901 had been enforced, 75 per cent. of the entire crop of country green teas would have
71 been excluded. And assuming that a standard such as Mr. Hewlett has described this to be—that is, a standard of fine Teenkai had been adopted it would have excluded 70 per cent. of the entire crop of country green teas. And assuming that a standard of similar fineness of quality had extended throughout the entire importation of teas it would have excluded 75 to 80 per cent. of all the teas that are usually imported into this country.

HENRY C. THORN, recalled in rebuttal.

EXAMINED BY MR. BISHOP:

I am familiar with the quantity of country green teas which were here at the port of New York at
72 the time when the standard for 1901 was adopted, not in exact figures, but practically so. There were thousands of packages of country green teas of lower grades than the standard which were pure, unadulterated, of good quality and fit for consumption, which were procurable for standards. My experience on that subject is that I was requested by a clerk of one of the Board of Tea experts to get up the market, and I got them up many samples and sent them up into his office, but none of them were accepted for that season.

(To Mr. Whitney.) I knew that the several thousand packages of teas lower than the Hyson, of a

fine Teenkai, at that time were pure, by looking 73
over the samples, drawing them and having a general idea of the tea market. I don't know how many samples I draw at that time lower than fine Teenkai because I draw tea all day, every day of the year. I never draw tea in any way excepting English breakfast tea, except by single weight; it is the custom of the trade to draw all teas single weight. I always draw them single weight. Any impurity or adulterated leaves would show just as well single weight as double. I do not like to put myself against the regulations of the United States Government, but I cannot see why the double weight is a superior test for ascertaining the impurities in teas. In my opinion, the regula- 74
tions of the United States Government are apparently defective in that respect.

JOSEPH H. LESTER, recalled in rebuttal:

EXAMINED BY MR. BISHOP:

I was familiar with the supply of country green teas at the port of New York at the time when this standard in question was selected, and I can state that there were teas which were pure, free from adulteration, good quality and fit for consumption, lower than the standard in quality, to be had in the City of New York. My knowledge is that there were a great many here at that period; thousands 75
of half chests. If this standard for country green teas for the year 1901 had been enforced, it would have excluded a very large proportion of the entire crop of country green teas, 75 to 80 per cent., I should think.

There is nothing in this particular kind of country green tea which makes it inferior as a class, an inferior class of teas. I should think it would compare very favorably with other kinds of tea. And if this standard of fineness, &c., adopted as the standard in this particular case of country green tea had been employed as the standard in the general body of

76 teas, about the same proportion of the general crop would have been excluded as that of green tea; three-fourths of the crop.

CROSS-EXAMINATION BY MR. WHITNEY:

"Q. These lower grade teas in 1901, were they free from coloring matter? A. No green tea is free from coloring matter.

"Q. Their coloring matter is not tea, is it? A. Well, it is on all tea.

"Q. Then, as a matter of fact, all the teas that you are speaking of, of lower grade than the Hyson of a fine Teenkai in 1901, did have coloring matter? A. So did the standard.

77 "Q. Had not the lower grades considerably more coloring matter than the standard? A. Not necessarily; may have had less.

"Q. Didn't they as a matter of fact? A. No.

"Q. Did you, as a broker, make the necessary tests to find out whether they did have more coloring matter than the standard? A. The Tea Association was requested by the experts——

"Q. I am asking whether you personally made tests? A. I am telling you my position.

"Q. Inform me what you personally did in the way of making tests to ascertain the amount of coloring matter? A. The Tea Association was requested by the New York——

78 "Q. No matter about that. Tell me what you personally did? A. I am telling what I did personally. I was on that Board.

"Q. Tell me personally and not the Tea Association; what did you do personally about drawing tea? A. We examined these teas that were sent in to us as being suitable for standards, and it was sent over to the United States Board of Tea Experts, and they were all rejected as being too poor.

"Q. You thought they did not have too much coloring matter, and the Board of Tea Experts thought they did? A. We thought they were proper standards."

[TESTIMONY CLOSED.]

Mr. Whitney: I move for a direction of a verdict 79
for the defendant.

The Court: There is no distinction between this case and the other as a matter of law, is there?

Mr. Bishop: There is one distinction.

The Court: In this one the tea was destroyed and the other it was not.

Mr. Bishop: And that raises the question of whether there was due process of law, and whether the act provides for due process of law. This was simply the arbitrary seizure of the goods and its destruction without any hearing or opportunity for hearing or trial.

The Court: I understand that the object of ma- 80
king this case now is to have the Supreme Court pass upon that question in addition to the other, is it not?

Mr. Bishop: Yes, but it is not to have the Supreme Court pass upon it. It is to have your Honor pass upon it.

The Court: The statute permits the act of the Collector, does it not?

Mr. Bishop: The statute says the Collector shall destroy these teas under certain circumstances.

The Court: The question is whether the statute is repugnant to the Constitution.

Mr. Bishop: The Collector did what he was required to do under the law.

The Court: I think the case had better go to the 81
Supreme Court upon that question. As long as the question must go there on the other case this might go with it.

Mr. Bishop: I ask the Court to direct a verdict for the plaintiff for the amount of the damages proved, on the following grounds:

FIRST.—That the action of the Secretary of the Treasury in fixing and establishing the standard No. 7 for country green teas by regulation promulgated March 21, 1901, was void and of no

82 effect, and afforded no justification to the defendant in excluding the plaintiff's teas from import, because said act of the Secretary of the Treasury was an attempted exercise of legislative power to regulate commerce, which power, by the Constitution of the United States, is conferred upon Congress alone and cannot be delegated by it.

SECOND.—That the Act of March 2, 1897, entitled "An act to prevent the importation of impure and unwholesome tea," in so far as it authorized the Secretary of the Treasury to determine what teas may be imported into the United States by citizens thereof, is unconstitutional and void, because such
83 power can be exercised only by Congress, and cannot be delegated by it to any other person or body.

THIRD.—That since the evidence shows that the teas offered by the plaintiff for import, were genuine, pure and wholesome, free from adulteration, fraud and deception and fit for consumption, and had heretofore been and now are ordinary subjects of commerce, the act of the Secretary of the Treasury in fixing and establishing a standard by regulation dated March 21, 1901, which excluded said teas from import, was unlawful, and the act of March 2, 1897, in so far as it authorized the fixing and establishing of such standards by said Secre-
84 tary, was in contravention of the Constitution of the United States, as depriving the plaintiff of his property and liberty without due process of law, and the said action of the Secretary of the Treasury afforded no justification to the defendant in rejecting said teas from import.

FOURTH—That Congress has no authority under the Constitution of the United States to pass a law restraining the plaintiff, a citizen of the United States, from importing, selling or dealing in teas

which are ordinary subjects of commerce and which 85
are not injurious to the public health, morals or welfare, and the act of March 2, 1897, in so far as it does prevent the plaintiff from importing, selling or dealing in such teas, is unconstitutional and void as depriving the plaintiff of his property and liberty without due process of law, and affords no justification to the defendant in excluding such of the plaintiff's teas in controversy as were ordinary subjects of commerce and were not injurious to the public health, morals or welfare.

FIFTH—That Congress cannot lawfully enact a law preventing a citizen of the United States from dealing in a wholesome article of food, unless the 86
restraint imposed upon the citizen has some tendency to protect the public health, morals or welfare, and that the Act of March 2, 1897, so far as the same authorized the Secretary of the Treasury to exclude teas merely on the ground of quality, based on taste and flavor, having no relation to or indicative of anything deleterious or injurious to the health or prejudicial to the public welfare, is unconstitutional and void as being an encroachment, unauthorized by the Constitution, on the liberty of a citizen, and that the said act and the regulations adopted thereunder affords no protection to the defendant in rejecting the plaintiff's teas, upon the ground of quality, based on taste and flavor, having 87
no relation to nor indicative of anything deleterious or injurious to the health or prejudicial to the public welfare.

I ask the Court to direct a verdict in favor of the plaintiff, also on the ground that it appears that the Secretary of the Treasury established the standard in question which excluded teas which were not of the lowest grade, neither demonstrably of inferior purity or unfit for consumption, or presumably or possibly so, because of their inferior quality; and that the teas offered for import as shown by plain-

88 tiff's witnesses, were not of the lowest grade of tea, were not demonstrably of inferior purity or unfit for consumption, or presumably or possibly so because of their inferior quality.

Also upon the following further grounds: That the proceedings taken by the tea examiner and the Tea Board of the United States General Appraisers and the Collector in the condemnation and rejection of said teas, under the Act of March 2, 1897, afford no justification to the Collector in the destruction thereof, because Congress had no power to enact a law prohibiting the importation of pure and wholesome teas, a proper article of commerce, except in the exercise of its power to lay and collect taxes,
89 duties, imposts and excise, and to provide for the common defense and general welfare, and that said act was not passed for any of said purposes.

Also, that the decision of the examiner and of the Tea Board of the United States General Appraisers affords no protection to the Collector in the destruction of the said teas for the reason that the owner of the teas was afforded no hearing or opportunity of hearing, and that his property was seized and destroyed without due process of law.

Motion denied. Exception taken.

The Court: GENTLEMEN OF THE JURY: There is no question of fact in this case. The only question is
90 one of law, which will be determined ultimately by the Supreme Court of the United States; that is, the constitutionality of the act under which the Collector of the port acted.

Therefore, you will find a verdict for the defendant.

The jury rendered a verdict for the defendant.

Inasmuch as the proceedings, evidence, objections, instructions, rulings and exceptions contained in the foregoing bill do not appear on record in this cause,

I, ALFRED C. COXE, a Judge of said Court, who 91
presided at the trial of said cause, after due notice being given to the defendant in said cause, have settled and signed said bill of exceptions and ordered that the same be made a part of the record in this cause, this 19 day of May, 1903.

ALFRED C. COXE,
U. S. Cir. Judge.

Approved in form.
EDWARD B. WHITNEY,
Of Counsel for Defendant.

(Endorsed)—U. S. Circuit Court.—Filed May 20. 1903.—Southern District New York.—John A, Shields, Clerk.

WILLIAM J. BUTTFIELD, Appellant, *against* NEVADA N. STRANAHAN, Collector of the Port of New York, Appellee.	Assignments of Error on Appeal.

And now on this 22d day of April, 1903, comes the appellant, William J. Buttfield, by James L. Bishop, Esquire, his attorney, and says that in the record and proceedings in the above entitled matter there is manifest error in this, to wit:

First. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor for damages proved, for the reason that the action of the Secretary of the Treasury in fixing and establishing the standard No. 7 for country green teas by regulation promulgated March 21st, 1901, was void and of no effect, and afforded no justification to the defendant in excluding the plaintiff's teas from import, because said act of the Secretary of the Treasury was an attempted exercise of legislative power to regulate commerce, which power, by the Constitution of the United States, is conferred upon Congress alone and cannot be delegated by it.

Second. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor, for damages proved, for the reason, that the act of March 2d, 1897, entitled "An act to prevent the importation of impure and unwhole-
45 some tea" in so far as it authorized the Secretary of the Treasury to determine what teas may be imported into the United States by citizens thereof, is unconstitutional and void because such power can be exercised only by Congress, and cannot be delegated by it to any other person or body.

Third. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor, for damages proved for the reason that, since the evidence shows that the teas offered by the plaintiff for import were genuine, pure and wholesome, free from adulteration, fraud and deception, and fit for consumption, and had heretofore been and now are ordinary subjects of commerce, the act of the Secretary of the Treasury in fixing and establishing a standard by regulation dated March 21st, 1901, which excluded said teas from import, was unlawful, and the act of March 2d, 1897, in so far as it authorized the fixing and establishing of such standards by said Secretary, was in contravention of the Constitution of the United States, as depriving the plaintiff of his property and liberty without due process of law, and the said action of the Secretary of the Treasury afforded no justification to the defendant in rejecting said teas from import.

Fourth. That the court erred in denying the motion made by the appellant herein, for the direction of a verdict in his favor, for damages proved for the reason that Congress has no authority under the Constitution of the United States to pass a law restraining the

plaintiff, a citizen of the United States, from importing, sell
46 ing, or dealing in teas which are ordinary subjects of commerce and which are not injurious to the public health, morals or welfare, and the act of March 2d, 1897, in so far as it does prevent the plaintiff from importing, selling or dealing in such teas, is unconstitutional and void as depriving the plaintiff of his property and liberty, without due process of law, and affords no justification to the defendant in excluding such of the plaintiff's teas in controversy as were ordinary subjects of commerce and were not injurious to the public health, morals or welfare.

Fifth. That the court erred in denying the motion made by the appellant herein for the direction of a verdict in his favor, for damages proved for the reason that Congress cannot lawfully enact a law preventing a citizen of the United States from dealing in a wholesome article of food, unless the restraint imposed upon the citizen has some tendency to protect the public health, morals or welfare, and that the act of March 2d, 1897, so far as the same authorized the Secretary of the Treasury to exclude teas merely on the ground of quality, based on taste and flavor, having no relation to nor indicative of anything deleterious or injurious to the health or prejudicial to the public welfare, is unconstitutional and void as being an encroachment, unauthorized by the Constitution, on the liberty of a citizen, and that the said act and the regulations adopted thereunder affords no protection to the defendant in rejecting the plaintiff's teas upon the ground of quality, based on taste and flavor, having no relation to nor indicative of
47 anything deleterious or injurious to the health or prejudicial to the public welfare.

Sixth. That the court erred in denying the motion made by the appellant herein for the direction of a verdict in his favor for damages proved for the reason that it appears from the testimony introduced by the plaintiff that the Secretary of the Treasury established the standard in question, which excluded teas which were not of the lowest grade, neither demonstrably of inferior purity or unfit for consumption, or presumably or possibly so, because of their inferior quality; and that the teas offered for import, as shown by the plaintiff's witnesses, were not of the lowest grade of tea, were not demonstrably of inferior purity or unfit for consumption, or presumably or possibly so because of their inferior quality.

Seventh. That the court erred in denying the motion made by the appellant herein for the direction of a verdict in his favor for the damages proved, for the reason that the proceedings taken by the tea examiner and the tea board of United States general appraisers and the collector in the condemnation and rejection of said teas, under the act of March 2d, 1897 afford no justification to the collector in the destruction thereof, because Congress had no power to enact a law prohibiting the importation of pure and wholesome teas, a proper article of commerce, except in the exercise of its power to lay and collect taxes, duties, imposts and excise, and to provide for

the common defense and general welfare, and the said act was not passed for any of said purposes.

48 Eighth. That the court erred in denying the motion made by the appellant herein for the direction of a verdict in his favor for the damages proved, for the reason that the decision of the examiner and of the tea board of the United States general appraisers affords no protection to the collector in the destruction of the said teas, for the reason that the owner of the teas was afforded no hearing or opportunity of hearing, and that his property was seized and destroyed without due process of law.

Ninth. That the court erred in granting the motion made by the appellee herein for a direction of a verdict in his favor.

Wherefore the said appellant prays that the judgment entered herein in the circuit court of the United States for the southern district of New York, be reversed and that the said circuit court of the United States for the southern district of New York be ordered to enter judgment for the plaintiff herein for the damages proved upon the trial of the action.

JAMES L. BISHOP,
Attorney for Appellant.

Office & P. O. address, 135 Broadway, borough of Manhattan, New York city.

(Endorsed:) Supreme Court of the U. S.—William J. Buttfield, appellant, against Nevada N. Stranahan, collector of the port of New York, appellee.—Assignments of error on appeal.—James L. Bishop, attorney for appellant, No. 135 Broadway, New York city.—A copy of the within paper has been received at this office, April 22, 1903, Henry L. Burnett, U. S. attorney.—U. S. circuit court, southern district of New York, Filed Apr. 22, 1903, John A. Shields, clerk.

49 Circuit Court of the United States for the Southern District of New York.

WILLIAM J. BUTTFIELD
vs.
NEVADA N. STRANAHAN, Collector of the Port of New York.
} Bond for Damages and Costs.

Know all men by these presents, that, the Fidelity and Casualty Company of New York, a corporation duly organized and existing under the laws of the State of New York, with principal office at No. 97 Cedar street, in the city, county and State of New York, is held and firmly bound unto the above named, Nevada N. Stranahan, collector of the port of New York, in the sum of two hundred and fifty dollars ($250.00) to be paid to the said Nevada N. Stranahan, collector of the port of New York, for the payment of which,

well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seals, and dated this eighteenth day of May, one thousand nine hundred and three.

Whereas, the above named, William J. Buttfield has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment of the circuit court of the United States for the southern district of New York, rendered in the above entitled suit.

Now therefore, the condition of this obligation is such that
50 if the above named, William J. Buttfield, shall prosecute said writ of error to effect, and answer all damage and costs, if he shall fail to make his plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,
[SEAL.] By EDW. C. LUNT, *3d Ass't Sec'y.*

Form of Justification.

The Fidelity and Casualty Company of New York, surety, 97–103 Cedar street, New York city.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

On this eighteenth day of May, 1903, personally appeared before me Edward C. Lunt, known to me to be the 3rd ass't secretary of the Fidelity and Casualty Company of New York, who being by me duly sworn, deposes and says that he resides in New York city, State of New York, that he is the 3rd ass't secretary of the said The Fidelity and Casualty Company of New York and knows the corporate seal thereof; that the said company is duly and legally incorporated under the laws of the State of New York; and that the liabilities of the company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and he further deposes and says that the following is a true copy of an extract from article III, of the by-laws of said company, whereby is shown the power vested in the president:—

51 "It shall be the duty of the president, or vice-president, to "preside at the meetings of the board of directors, and to "perform whatever belongs to the executive department of the "board. He may make insurances and all other contracts on behalf "of the company, sign conveyances of real estate, make transfers of "stock and securities, execute satisfaction pieces of mortgages, and "use the seal of the company when necessary in the business of the "company. He may appoint agents and qualify them by certificates "of authority to execute contracts of insurance on behalf of the com-"pany."

He further deposes and says that the following is a true copy of an extract from the minutes of the meeting of the board of directors of the company, held at its office in the city of New York, on the 19th day of November, 1902, a quorum being present, and that the resolution contained in said extract was unanimously adopted and is now in full force and effect:

"On motion it was duly resolved—that each of the follow-
"ing persons, to wit: Robert J. Hillas, of the town of West Ho-
"boken, State of New Jersey, treasurer-secretary of the company,
"Henry Crossley, of the borough of Brooklyn, city and State of New
"York, assistant secretary of the company, Frank E. Law, of East
"Orange, State of New Jersey, second assistant secretary of the com-
"pany, and Edward C. Lunt, of the borough of Brooklyn, city and
"State of New York, third assistant secretary of the company, is
"hereby jointly and severally, authorized to execute on behalf of
"the Fidelity and Casualty Company of New York, bonds, under-
"takings and all contracts of suretyship, and to bind said
52 "company as surety; and to attest the corporate seal of the
"company to any and all bonds, undertakings and all con-
"tracts of suretyship which shall have been signed by George F.
"Seward, the president of the company, or by either of the other
"secretaries designated herein."

He further deposes and says that the seal affixed to the annexed bond of William J. Buttfield is the corporate seal of the said The Fidelity and Casualty Company of New York, and was thereto affixed by order and authority of the board of directors of said company, and that he signed his name thereto by like order and authority as 3rd ass't secretary of said company; and that he is acquainted with him — to be the — secretary of said company; and that the signature of said —— —— subscribed to said bond is in the genuine handwriting of said —— ——, and was thereto subscribed by order and authority of said board of directors, or the by-laws of said company, and in the presence of said deponent.

[SEAL.] EDW. C. LUNT.

Acknowledged and sworn to before me and subscribed in my presence this eighteenth day of May, 1903.

[SEAL.] C. M. CRANE,
Commissioner of Deeds, City, County, and State of New York.

(Endorsed:) Approved as to form and also as to sufficiency of sureties, with reservation however, to the defendant of the right at any time to examine the proper officers of the surety company
under oath, touching its assets, liabilities and financial condi-
53 tion generally. Alfred C. Coxe, U. S. circuit judge.—U. S. circuit court, southern district of New York, Filed May 20, 1903, John A. Shields, clerk.

54 By the Honorable Alfred C. Coxe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Nevada N. Stranahan, collector of the port of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 15th day of June 1903, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William J. Buttfield, is appellant and you are respondent to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 19th day of May, in the year of our Lord one thousand nine hundred and three, and of the Independence of these United States the one hundred and twenty-seventh.

ALFRED C. COXE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

55 [Endorsed:] E & A C 2042 Supreme Court of the United States. William J. Buttfield appellant *vs.* Nevada N. Stranahan, collector of the port of New York, respondent. Citation. James L. Bishop att'y for appellant 135 Broadway Manhattan New York city. A copy of the within paper has been this day received at this office May 20, 1903 Henry L. Burnett, U. S. attorney. S. 10 p'd.

56 [Endorsed:] United States Supreme Court. William J. Buttfield, pl'ff in error, *vs.* Nevada N. Stranahan collector of customs at the port of New York, def't in error

Endorsed on cover: File No. 18,945. S. New York C. C. U. S. Term No. 294. William J. Buttfield, plaintiff in error, *vs.* Nevada N. Stranahan, collector of the port of New York. Filed May 26th, 1903.